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Memorandum for the Secretary of Defense  
Subject: Review of Sentences  
Reference: Army Order 31/1945

S. of S. (through P.O.S. and A.C.)

Trial of War Criminals (Army Order 31/1945)  
Review of Sentences

You will remember that at the conference on 23 April 1948, when you were considering the sentence of fifteen years' imprisonment passed on Schneider, one of the accused in the Tolosa case, I suggested, and you agreed, that individual sentences should not be reviewed separately from time to time but that after the termination of the war crimes commitment in the autumn of this year there should be a general review of all sentences passed on war criminals who have been tried pursuant to Army Order 31/1945.

You then asked me to let you have a paper with my views on the matter.

I think the best plan would be to constitute two Review Boards, one for Europe and the other for the Far East. Each Board would consist of a senior officer not below the rank of (say, Major-General as president with two officers not below the rank of Lieutenant-Colonel as members, one to be chosen from the Legal Staff (past or present) of my office and the other from the Command concerned, and should have the assistance of a suitable officer (say a Major or Captain) to search out and procure all the documents and information required, make the necessary arrangements, and generally act as Secretary.

Each Review Board would consider all cases tried under Army Order 31/1945 in the Command concerned where the sentences were unexpired. They would examine the Proceedings of each case, any petitions that may have been submitted and the reports of prison governors on the conduct and health of the prisoner. They would compare the circumstances of similar cases. In completion of their task these Advisory Review Boards would recommend what action you might take by way of remission under Regulation 12 of the Regulations for the Trial of War Criminals (Army Order 31/1945) to ensure that the punishment should so far as possible be appropriate and uniform in existing circumstances, bearing in mind that such punishments were imposed not for reformatory purposes but by way of retribution.

I think the Board examining European cases might be empowered to visit Germany.

It is also a matter for consideration whether the review now proposed is to be a final one or whether in the case of long sentences a further review should take place after a substantial period of time had elapsed. It is important, I think, that the Review Boards should be made aware which alternative is to be adopted.

Should you please enable the S. of S. to reply. It is desired to have an early answer and would be glad of the necessary information to be made available. If investigations are likely to be protracted, please let me know, so that I may be kept advised.

*John*

Judge Advocate General.  
6 May 1948.

/SPW.

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1/W.C.1 - Secretary of State's B.M.No.E3/1041.  
P.O.W. - SCHWENIER. Severity of Sentence.  
Letter from Lord Chancellor.

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S. of S. for War

With reference to Minute 1 and to the Lord Chancellor's letter to you dated 11 March 1948 (1A).

SCHWENIER was tried by Military Court (War Crimes) in October 1945 with four others of the crew of the "PELEUS"; and as stated in the Lord Chancellor's letter is now in the custody of the Control Commission, who have no responsibility for the legal review of the Proceedings.

Under Regulation 12 of the Regulations for the Trial of War Criminals (Army Order 31/1945) you have power to reconsider and reduce the sentence, and in the case of a prisoner serving his sentence in Germany a like power has been delegated to the Commander-in-Chief (General Robertson).

It is, I think, a matter for consideration whether this case should be selected now for special review of sentence, or whether the representations on behalf of Schwender should be noted for consideration as and when some general review of sentences in operation is undertaken on a comprehensive basis (e.g., on the liquidation of the war crimes commitment).

With regard to the particular facts of the "PELEUS" case, a succinct account of the trial appears as Case No.1 in the "Law Reports of Trials of War Criminals" published by the Stationery Office in 1947.

The original Proceedings are available in my Office for reference if you require them.

The special defence put forward by Schwender (referred to in the paragraphs numbered 1, 2 and 3 of Bishop Shawe's letter of 21 November 1947 - attached to 1A) who fired with a machine gun in the direction of a raft, or part of a raft, which there were grounds for inferring contained survivors of the "PELEUS", was rejected by the Court as inherently improbable owing to the unsuitability of the weapon used, a light machine gun for sinking floating objects of considerable size, and on account of its inconsistency with the evidence of Lt. Lenz, another accused, that he himself took the weapon from Schwender with the deliberate intention of ending the sufferings of any survivors there might be.

*Jmu*

Judge Advocate General.  
31 March 1948.

/EPW.

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D.J.A.G.

Would you please enable the S. of S. to reply. He is anxious to send an early answer and would be glad of the necessary information as soon as possible. If investigations are likely to be protracted, please provide immediately, such information as you have, so that an interim reply may be sent.

(Sgd) A.C.W. Drew.  
P.S. to S.of S.  
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